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|  | <b>LOS LUNAS POLICE DEPARTMENT</b>  |   |
|   | ADMINISTRATION                      | NUMBER:<br>ADM.34.01  |
|   | EFFECTIVE DATE:<br>October 31, 2011 |   |
|   | SUBJECT: Duty to Disclose           |   |
|   |                                     | REVIEW DATE:<br>July 17, 2015   |
| AMENDS/ SUPERSEDES:   |                                     | NMSA:   |
| NMMLEPSC STANDARDS:<br>ADM.34.01  |                                     | APPROVED BY CHIEF OF POLICE<br>NAITHAN G. GURULE<br><br>Signature |

## I. PURPOSE

The purpose of this policy is to reduce the risk of liability to the Division and its personnel for failing to disclose to the Village Attorney or District Attorney, any evidence that may be favorable to a defendant and to ensure that agency personnel are in compliance with the United States Supreme Court decisions of *Brady v Maryland* (1963) and *Giglio v United States* (1972) and their progeny.

## II. POLICY

It is the policy of the Department to require that law enforcement personnel provide all potentially exculpatory evidence to prosecutors.

Furthermore, it will be the responsibility of the Chief of Police, or his/her designee, to review all officers' files to determine if any officer has a disciplinary history that would impact the officer's credibility as a witness. This information shall be made available to the prosecutor for a determination of whether said information is Brady material.

## III. DEFINITIONS

- a. Duty to Disclose: The decision of *Brady v Maryland* (1963) places an affirmative duty on a prosecutor to disclose exculpatory evidence or Brady material to a defendant. This duty has been extended to police agencies through

case law, requiring law enforcement agencies to notify the prosecutor of any potential exculpatory information or Brady material.

- b. Exculpatory Evidence: Evidence in the government's possession that is favorable to the accused and that is material to either guilt or punishment. Exculpatory evidence can justify or exonerate an accused person's actions or show that they had a lack of criminal intent.
- c. Brady/Giglio Material: Any information or evidence that may impeach the credibility of a prosecution witness, including law enforcement officers. Impeachment information includes prior criminal records or other acts of misconduct, promises of leniency or immunity offered in return for testifying, and any allegations of dishonesty or untruthfulness.

#### **IV. INVESTIGATIVE PROCEDURE**

- a. Officers are required to document all investigative activity involved in an investigation, including exculpatory evidence and Brady/Giglio material.
- b. All information and/or documentation involving an investigation will be submitted to the prosecutor prior to actual prosecution of the case. The prosecutor will determine what information contained in the case file will be provided to defense counsel.

#### **V. AGENCY REVIEW and DISCLOSURE**

- a. The Chief of Police or his/her designee will review employee files and disclose to the prosecutor any finding of misconduct that reflects upon the truthfulness or possible bias of the employee, including:
  - 1. A finding of lack of candor during an administrative inquiry.
  - 2. Any past or pending criminal charge brought against the employee.
  - 3. Any credible allegation of misconduct that reflects upon the truthfulness or possible bias

of the employee that is the subject of a pending investigation.

b. Allegations that cannot be substantiated, are not credible, or have resulted in the exoneration of an employee generally are not considered to be potential impeachment information. Upon request, such information which reflects upon the truthfulness or bias of the employee will be provided to the prosecutor under the following circumstances:

1. When advised that it is required by a Court decision; when the allegation was made by a prosecutor, magistrate, or judge.

2. When the allegation received publicity.

3. When the prosecutor and Chief of Police agree that such disclosure is appropriate, based upon exceptional circumstances involving the nature of the case or the role of the agency witness.

4. When disclosure is otherwise deemed appropriate by the agency.

c. When potential impeachment information has been disclosed to the prosecutor, the information disclosed, along with any judicial rulings and related pleadings shall be provided to the employee that is subject to the disclosure and copies will be maintained by the Division.

d. Each employee who is notified to appear as a witness in a criminal case has an individual obligation under this policy to notify the prosecutor on the specific case of any sustained disciplinary history that may impact credibility and qualify as Brady/Giglio material.

e. Disclosure of information to individuals other than the prosecutor shall be governed by current Public Records laws and policies and Court rules governing discovery.

## **VI. TRAINING**

a. The Training Sergeant will ensure that all sworn personnel are familiar with the requirements of this policy and will

stress the importance of credibility as an essential requirement of being able to function as a police officer.